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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	77527093
Applicant	Gastroceuticals, LLC
Applied for Mark	ROOBI
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Date	02/18/2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In re:	Gastroceuticals, LLC	:
		:
Application No.:	77/527,093	:
		:
Filing Date:	July 21, 2008	:
		:
Trademark:	ROOBI	:
		:
Our Ref.:	T/5527-3	:

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT'S REPLY BRIEF

Applicant, Gastroceuticals, LLC, hereby submits its Appeal Brief pursuant to Trademark Rule 2.142(b)(1), 37 C.F.R. § 2.142(b)(1).

REMARKS

The newly assigned Examining Attorney refuted the arguments set forth in Applicant's Appeal Brief. Applicant respectfully disagrees with the Examining Attorney's position, but will not restate its case in its Reply Brief. However, certain comments made by the Examining Attorney in connection with Applicant's arguments concerning consumer sophistication warrant response.

ARGUMENT

In its Appeal Brief Applicant argued that consumers of Applicant's and Registrant's goods are sophisticated. In support of this argument Applicant argued that there are approximately 700 marks registered with the U.S. Patent and Trademark Office for bottled water and supplied a printout (the "TESS Printout") from the U.S. Patent and Trademark Office's TESS searching

database showing the results for a search of “((bottled)ADJ(water))[GS] and (Live)[LD] and `RD > “18000101”.” *See* Applicant’s Appeal Brief at 12; *see also* Exhibit L attached thereto.

In the Examining Attorney’s Appeal brief, the Examining Attorney objected to the introduction of the TESS Printout because the mere submission of a list of registrations or a copy of a private company search report does not make such registrations part of the record. Examining Attorney’s Brief at 18.

First, the Board should note that Applicant’s printout was obtained from the U.S. Patent and Trademark Office web site, not a private search company. The purpose of the TESS Printout is not to make the third party registrations of record but to demonstrate the sheer number of marks that the U.S. Patent and Trademark Office has registered for bottled water. The TESS Printout accomplishes that purpose. It shows that a search of Office records for active marks registered on or after January 1, 1800 for bottled water results in 692 registrations. The cases cited by the Examining Attorney in support of her objection relate to parties seeking to introduce third party registrations to refute a refusal under Section 2(e)(1) or Section 2(d). Here, the TESS Printout has been introduced for the limited purpose of identifying the number of registrations issued for marks for bottled water.

Dated: February 18, 2010
New York, New York

Respectfully submitted,



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